

May 5, 2009

Councilman Jea P. Street  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor  
Wilmington, DE 19801

**RE: Freedom of Information Act Complaint  
Against Colonial School District**

Dear Councilman Street:

On March 11, 2009 you wrote to the Delaware Department of Justice (“DDOJ”) asking for a determination as to whether the Colonial School District Board of Education (“Board”) violated the Freedom of Information Act (“FOIA”) as a result of specific actions taken by the Board at its March 10, 2009 meeting. The DDOJ forwarded your letter to the Colonial School District (“District”) and received their timely response, as well as their prompt response to our further inquiry. This is the DDOJ’s determination of your complaint pursuant to 29 *Del. C.* § 10005(e).

**RELEVANT FACTS**

You allege that at the March 10, 2009 Board meeting the District Superintendent removed a letter that Mr. Devon Hynson had distributed to the Board members; that the Superintendent had a State Trooper escort Mr. Hynson out of the building; and that the

Superintendent did not allow public comment and canceled the public recognition portion of the meeting.

The District responds as follows: On March 10, a letter was placed for each Board member on the table in front of each Board member's seat when the Board members came into the meeting room. The Superintendent, who is also the Executive Secretary of the Board, was unaware of either the content or author of the letter. He was reviewing the letter when Mr. Hynson approached him and began yelling. The District submitted to the DDOJ eight letters from witnesses who observed Mr. Hynson's behavior. Each confirms that Mr. Hynson loudly insisted that the Superintendent submit his letter to the Board members and that he refused to sit down, although, according to the District, the Superintendent never removed the letters. The Board President decided to postpone the start of the meeting, and the Board called the police. The meeting was delayed about six minutes, until a State Trooper escorted Mr. Hynson from the meeting room. According to the witnesses, Mr. Hynson was yelling the entire time. At the end of the meeting, no one came forward to speak in the time allotted for public comment.

#### **RELEVANT STATUTES**

29 *Del. C.* § 10004(a) provides that all meetings of public bodies shall be open to the public, unless closed pursuant to statute. 29 *Del. C.* § 10004(d) permits a public body to remove any person "who is willfully and seriously disruptive of the conduct of such meeting."

### **DISCUSSION**

The issue whether the Superintendent refused to allow the Board members to see papers Mr. Hynson distributed does not implicate FOIA. FOIA is silent as to whether a member of the public has the right to distribute papers to the members of a public body when they gather for a public meeting. FOIA is not concerned with the public's ability to communicate with a public body, only with the public's opportunity to observe that body. For the same reason, FOIA does not require a public body to allow public participation at its meetings. *Reeder v Del. Dept. of Ins.*, 2006 WL 510067 (Del. Ch. 2006). No evidence has been submitted that the Superintendent cancelled the public comment portion of the March 10 meeting, but under *Reeder* it would not implicate FOIA if he had.

As to the removal of Mr. Hynson from the meeting place, Mr. Hynson interfered with the Board's ability to begin the meeting—which was “disruptive of the conduct of [the] meeting.” 29 *Del. C.* § 10004(d). The question, then, is whether Mr. Hynson was “willfully and seriously disruptive,” as FOIA requires in order for a member of the public to be removed. For at least six minutes, until a police officer escorted him out, Mr. Hynson refused to sit down and be quiet, which indicates that Mr. Hynson had no intention of allowing the meeting to begin. Such behavior was both willful and a serious disruption of a meeting. Therefore, the District was justified in removing Mr. Hynson.

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**CONCLUSION**

For the reasons stated, we determine that the Colonial School District did not violate the Freedom of Information Act at the March 10, 2009 Board meeting.

Sincerely,

Judy Oken Hodas  
Deputy Attorney General

cc: Sarah Murray, Opinion Coordinator  
David H. Williams, Esquire